

## Bid Solicitation and Billing Requirements

### Policy

#### USDA Federal Regulations:

(a) *Who must use cost containment procedures for infant formula?* All State agencies must continuously operate a cost containment system for infant formula that is implemented in accordance with this section except:

- (1) State agencies with home delivery or direct distribution food delivery systems;
- (2) Indian State agencies with 1,000 or fewer participants in April of any fiscal year, which are exempt for the following fiscal year;
- (3) State agencies granted a waiver under paragraph (e) of this section; and
- (4) State agencies granted a postponement under paragraph (f) of this section.

(b) *What cost containment procedures must be used?* State agencies must use either a single-supplier competitive system as outlined in paragraph (c) of this section, or an alternative cost containment system as outlined in paragraph (d) of this section.

(c) *What is the single-supplier competitive system?*

(1) Under the single-supplier competitive system, a State agency solicits sealed bids from infant formula manufacturers to supply and provide a rebate for infant formulas. The State agency must conduct the procurement in a manner that maximizes full and open competition consistent with the requirements of this section. A State agency must:

(i) Provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless excepted by the Secretary; and

(ii) Publicly open and read all bids aloud on the day the bids are due.

(2) *How must a State agency structure the bid solicitation?*

(i) *Single solicitation.* Under the single solicitation system, the State agency's bid solicitation must require the winning bidder to supply and provide a rebate on all infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new infant formulas that are introduced after the contract is awarded. The solicitation must require bidders that do not produce a soy-based infant formula to subcontract with another manufacturer to supply a soy-based infant formula under the contract. In this case, the bid solicitation must require that the winning bidder pay the State agency a rebate on the soy-based infant formula supplied by the subcontractor that is issued by the State agency. The bid solicitation must require all rebates (including those for soy-based infant formula supplied by a subcontractor) to be calculated in accordance with paragraph (c)(6) of this section. All of these infant formulas are called contract brand infant formulas.

(ii) *Separate solicitations.* Under the separate solicitation system, a State agency issues two bid solicitations. Any State agency or alliance that served a monthly average of more than 100,000 infants during the preceding 12-month period shall issue separate bid solicitations for milk-based and soy-based infant formula. The first solicitation must require the winning bidder to supply and provide a rebate on all milk-based infant formulas it produces that the State agency chooses to issue, except exempt infant formulas. Rebates must also be paid on any new milk-based infant formulas that are introduced by the manufacturer after the contract is awarded.

These infant formulas are considered to be contract brand infant formulas. The second bid solicitation must require the winning bidder to supply and provide a rebate on all soy-based infant formulas it produces that the State agency chooses to issue. Rebates must also be paid on any new soy-based infant formulas that are introduced by the manufacturer after the contract is awarded. These infant formulas are also considered to be contract brand infant formulas.

(3) *What is the size limitation for a State alliance?* A State alliance may exist among State agencies if the total number of infants served by States participating in the alliance as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, does not exceed 100,000. However, a State alliance that existed as of July 1, 2004, and serves over 100,000 infants may exceed this limit to include any State agency that served less than 5,000 infants as of October 1, 2003, or such subsequent date determined by the Secretary for which data is available, and/or any Indian State agency. The bid solicitation must identify the composition of the State alliances for the purpose of a cost containment measure, and verify that no additional State shall be added to the State alliance between the date of the bid solicitation and the end of the contract. The Secretary may waive these requirements not earlier than 30 days after submitting to the Committee on Education and the Workforce of the House of Representatives and the Committee on Agriculture, Nutrition, and Forestry of the Senate a written report that describes the cost-containment and competitive benefits of the proposed waiver.

#### **USDA Federal Regulations:**

(g) May a State agency implement cost containment systems for other supplemental foods? Yes, when a State agency finds that it is practical and feasible to implement a cost containment system for any WIC food other than infant formula. The State agency must:

- (1) Provide notification to FNS by means of the State agency's State Plan.
- (2) Comply with paragraphs (c)(2) and (k) of this section
- (3) Provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless exempted by the Secretary. The State must publicly open and read all bids aloud on the day the bids are due.
- (4) Issue separate solicitations for authorized foods if any alliance served a monthly average of more than 100,000 infants during the preceding 12-month period.

#### **USDA Federal Regulations:**

(k) *What are the requirements for infant formula and authorized food rebate invoices?* A State agency must have a system in place that ensures infant formula and authorized food rebate invoices, under competitive bidding, provide a reasonable estimate or an actual count of the number of units purchased by participants in the program.

## **Authority**

**USDA Federal Regulations:** 7 CFR 246.16a Infant formula and authorized foods cost containment. (a) – (c)(3)

**USDA Federal Regulations:** 7 CFR 267.16a Infant formula and authorized foods cost containment (g)

**USDA Federal Regulations:** 7 CFR 267.16a Infant formula and authorized foods cost containment (k)

## Procedures

The State WIC office is required to include specific bid solicitation and billing requirements when developing requests for bids on rebates for authorized foods and/or infant formulas.

### State Alliances

The bid solicitation must:

- Identify the composition of State alliances for the purpose of a cost containment measure
- Verify that no additional states shall be added to the State alliance between the date of the bid solicitation and the end of the contract.

Current provisions and requirements regarding State alliances for infant formula rebates include all other authorized foods for which rebates are sought.

### Solicitation Time Requirements

The State agency must provide a minimum of 30 days between the publication of the solicitation and the date on which the bids are due, unless exempted by the Secretary.

### Bid Notification

The State agency must publicly open and read all bids aloud on the day the bids are due,

### Rebate invoices

The State agency has a system to ensure that the rebate invoices under competitive bidding provide a reasonable estimate or an actual count of the number of units sold to WIC participants.